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Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 6

Notice and Time Requirements in Delinquency Proceedings

6.2 Definitions of Parent, Guardian, and Legal Custodian

Replace the discussion of the *CAW* case on pages 116–17 with the following:

In *In re CAW,* ___ Mich ___ (2003), the Michigan Supreme Court reversed the Court of Appeals' decision that a putative father has standing to intervene in a child protective proceeding under the Juvenile Code where the child involved has a legal father. *In re CAW* involved a married couple, Deborah Weber and Robert Rivard, and their children. In July 1998, a petition alleging abuse and neglect was filed pursuant to MCL 712A.2(b). The petition stated that Rivard was the legal father of the children but might not be the biological father of "any or all of the children." The petition also indicated that Larry Heier was the biological father of one of Weber and Rivard's children, CAW. The trial court published a notice of hearing to Heier, but he did not attend any hearings. Later Rivard and Weber indicated that Rivard was the father of all of the children. The trial court then deleted all references to Heier contained in the petition. In November 2000, Weber and Rivard's parental rights to CAW were terminated. Heier then filed a motion in the trial court seeking to intervene in the child protective proceedings. Heier alleged that he was the biological father and had standing on that basis. The lower court denied Heier's motion. *CAW, supra* at ___. The Court of Appeals reversed.

The Supreme Court held that Heier did not have standing to intervene in the child protective proceedings. *Id.* at ___. The Court indicated that intervention in such a proceeding is controlled by MCR 5.921(D),* which provided, in part, that a putative father is entitled to participate only "[i]f, at any time during the pendency of a proceeding, the court determines that the minor has no father as defined in MCR 5.903(A)(4). . . ." MCR 5.903(A)(4) defined a "father" as "a man married to the mother at any time from a minor's conception to the minor's birth unless the minor is determined to be a child born out of wedlock . . . ." MCR 5.903(A)(1) defined a "child born out of wedlock" as a child conceived and born to a woman who is unmarried from

*MCR 5.921 was amended on May 1, 2003. See MCR 3.921(C).

the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of the marriage. Because Weber and Rivard were married during the gestation period, CAW was not "born out of wedlock." No finding had ever been made that CAW was not the issue of the marriage, and the termination of Rivard's parental rights was not a determination that CAW was not the issue of the marriage. Therefore, the requirements of MCR 5.903 were not met, and Heier did not have standing. *CAW, supra* at ___.

CHAPTER 19

Designated Case Proceedings—Sentencing & Dispositional Options

19.2 Factors to Determine Whether to Impose a Juvenile Disposition or Adult Sentence

Replace the last paragraph in Section 19.2 with the following language:

MCL 712A.18(1)(n) requires the court to consider the factors listed in that statute when deciding whether to impose a juvenile disposition, impose an adult sentence, or delay imposition of sentence; the court need not, however, make findings on each of the statutory factors. In *People v Petty*, ___ Mich ___, ___ (2003), the Michigan Supreme Court overruled *People v Thenghkam*, 240 Mich App 29 (2000) to the extent that it required a trial court to provide a recitation of each of the factors contained in MCL 712A.18(1)(n). The Court stated as follows:

> "Instead of concentrating primarily on the sufficiency of the trial court's factual determinations vis-a-vis the criteria listed in MCL 712A.18(1)(n)(i)-(vi), a plain reading of the statute requires that a court deliberately consider whether to enter an order of disposition, impose a delayed sentence, or impose an adult sentence in light of the six factors enumerated in [MCL 712A.18(1)](n)(i)-(vi). As evidence that it complied with the statute, the trial court, on the record, must acknowledge its discretion to choose among the three alternatives. Hence, a court should consider the enunciated factors, MCL 712A.18(1)(n)(i) through (vi), to assist it in choosing one option over the others. A trial court need not engage in a lengthy 'laundry list' recitation of the factors. Rather, the focus of the hearing should be on the three options, i.e., an adult sentence, a blended sentence, or a juvenile disposition, as outlined in the recently adopted court rules.[6] For this reason, we repudiate the Court's reasoning in *Thenghkam* to the extent it conflicts with this explicit three-part inquiry.
>
> As a result, trial courts will no longer be forced to undertake a mechanical recitation of the statutory criteria. Rather, a court must logically articulate on the record why it has chosen one alternative over the other two, in light of the criteria articulated in MCL 712A.18(1)(n). By so doing, a court performs the analysis required by the Legislature, while establishing an adequate record to permit appellate review."

"[6] See MCR 3.955 specifically addressing these three options."

Petty, supra at ___.

CHAPTER 19

Designated Case Proceedings—Sentencing & Dispositional Options

19.3 Hearing Procedures

Insert the following language on p 425 as the first full paragraph on that page:

Allocution. In *People v Petty*, ___ Mich ___, ___ (2003), the Michigan Supreme Court held that a juvenile defendant tried in a criminal proceeding has a right to allocute prior to sentencing. In *Petty,* the court imposed an adult sentence without providing the defendant with the opportunity for allocution. The Michigan Supreme Court stated:

> "To deny a juvenile a meaningful opportunity to allocute at the only discretionary stage of a combined dispositional and sentencing proceeding would seriously affect the fairness and integrity of the judicial proceeding, particularly when the juvenile is subject to an adult criminal proceeding." *Petty, supra* at ___.

The Court remanded the case to the trial court with instructions for the trial court to allow the defendant the opportunity to allocute before imposing a sentence.

Based upon the Court's findings in *Petty, supra,* MCR 3.955(A) has been amended. Effective July 14, 2003, Administrative Order 2003-39 amends MCR 3.955(A) to require the court to provide an opportunity for the defendant, the defendant's attorney, the prosecutor, and the victim to advise the court prior to disposition or sentencing. The following language was added to MCR 3.955(A):

> "The court also shall give the defendant, the defendant's lawyer, the prosecutor, and the victim an opportunity to advise the court of any circumstances they believe the court should consider in deciding whether to enter an order of disposition or to impose or delay imposition of sentence."

CHAPTER 24

Appeals

24.8 Standards of Review

D. "Automatic Waiver" Proceedings

Insert the following language on p 483 following the first full paragraph:

In *People v Petty*, ___ Mich ___, ___ (2003), the Michigan Supreme Court overruled *People v Thenghkam*, 240 Mich App 29 (2000) to the extent that it required a trial court to provide a recitation of all of the statutory factors when making a decision regarding the sentencing of a juvenile. The Court stated as follows:

> "[A] plain reading of the statute requires that a court deliberately consider whether to enter an order of disposition, impose a delayed sentence, or impose an adult sentence in light of the six factors enumerated in [MCL 712A.18(1)](n)(i)-(vi). As evidence that it complied with the statute, the trial court, on the record, must acknowledge its discretion to choose among the three alternatives. Hence, a court should consider the enunciated factors, MCL 712A.18(1)(n)(i) through (vi), to assist it in choosing one option over the others. A trial court need not engage in a lengthy 'laundry list' recitation of the factors. Rather, the focus of the hearing should be on the three options, i.e., an adult sentence, a blended sentence, or a juvenile disposition, as outlined in the recently adopted court rules.
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> * * *
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> [T]rial courts will no longer be forced to undertake a mechanical recitation of the statutory criteria. Rather, a court must logically articulate on the record why it has chosen one alternative over the other two, in light of the criteria articulated in MCL 712A.18(1)(n). By so doing, a court performs the analysis required by the Legislature, while establishing an adequate record to permit appellate review." (Footnotes omitted.) *Petty, supra* at ___.

CHAPTER 24

Appeals

24.10 Appointment of Appellate Counsel

Replace the last paragraph on p 486 with the following information:

The Michigan Supreme Court has held that indigent criminal defendants do not have a federal or state constitutional right to appointed counsel to assist them in filing an application for leave to appeal. *People v Bulger,* 462 Mich 495 (2000). The U. S. Supreme Court denied certiorari in *Bulger. Bulger v Michigan,* 531 US 994 (2000). In *Tesmer v Granholm,* ___ F3d ___, ___ (2003), the U.S. Court of Appeals for the Sixth Circuit held that indigent criminal defendants are entitled to appointed counsel in their first appeal, even if the appeal is discretionary. In *Tesmer* the Court reviewed MCL 770.3a, which provides that a defendant who pleads guilty or nolo contendere is not entitled to have counsel appointed for review of the defendant's conviction or sentence except in limited circumstances. The Sixth Circuit Court of Appeals stated:

> "Michigan's statute creates unequal access even to the first part of the appellate system. Though the judge-appellants argue that any distinctions in Michigan's appellate system stem from the fact the indigent pleads guilty, or that the appeal is merely discretionary, the effect is to create a different opportunity for access to the appellate system based upon indigency. As applied, the statute violates the due process provision of the Fourteenth Amendment to the United States Constitution, and is thus unconstitutional." *Tesmer, supra* at ___.

CHAPTER 25

Recordkeeping and Reporting Requirements

25.1 Family Division Records

Insert the following language on p 490 immediately before Section 25.2:

In *In re Lapeer County Clerk*, ___ Mich ___, ___ (2003), the Lapeer County Clerk filed a complaint requesting superintending control based upon a Lapeer Circuit Court Local Administrative Order that assigned duties of the county clerk to the staff of the Family Division of the Circuit Court. The Michigan Supreme Court dismissed the complaint for superintending control but, under its authority to prescribe rules of practice and procedure, provided guidance for courts in crafting future administrative orders.

The Michigan Supreme Court found that the clerk of the court must have care and custody of the court records and must perform ministerial duties that are noncustodial as required by the court. In regards to the clerk's custodial duties, the Michigan Supreme Court stated:

> "[W]e conclude that the clerk has a constitutional obligation to have the care and custody of the circuit court's records and that the circuit court may not abrogate this authority. See *In the Matter of Head Notes to the Opinions of the Supreme Court*, 43 Mich 640, 643; 8 NW 552 (1880) ('the essential duties [of a constitutional officer] cannot be taken away, as this in effect would result in the abolishment of the office . . .').
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> * * *
>
> The circuit court clerk's role of having the care and custody of the records must not be confused with *ownership* of the records. As custodian, the circuit court clerk takes care of the records for the circuit court, which owns the records. Nothing in the constitutional custodial function gives the circuit court clerk independent ownership authority over court records. Accordingly, the clerk must make those records available to their owner, the circuit court. The clerk is also obligated to make the records available to members of the public when appropriate." *Lapeer, supra* at ___ (emphasis in original).

The Court stated the following in regards to the noncustodial ministerial function of the clerk:

> "[W]e hold that prescribing the exact nature of a clerk's noncustodial ministerial functions is a matter of practice and procedure in the administration of the courts. Accordingly, the

authority to prescribe the specific noncustodial ministerial duties of the clerk of the circuit court lies exclusively with the Supreme Court under Const 1963, art 6, §5.

As such, the judiciary is vested with the constitutional authority to direct the circuit court clerk to perform noncustodial ministerial duties pertaining to court administration as the Court sees fit. This authority includes the discretion to create duties, abolish duties, or divide duties between the clerk and other court personnel, as well as the right to dictate the scope and form of the performance of such noncustodial ministerial duties." *Lapeer, supra* at ___.